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ABSTRACT

A review of the state of collective bargaining in higher education in Arkansas discusses the causal elements of the movement, examines court cases and attorney generals' opinions, and suggests implications for its future in the state. It is noted that although Arkansas may seem far from the movement by comparison with other states, some of the same factors exist there. All official opinions of collective bargaining in Arkansas state that while public employees have the right to join a union, the state is under no obligation to recognize or engage in bargaining with a union. There is no law either prohibiting or allowing bargaining in the state. Legislation affecting the elementary and secondary sectors has had mixed success, but experience has shown that when enabling legislation is passed at this level, postsecondary education follows suit. Arkansas is among the last 12 states to adopt collective bargaining. It is concluded about the future of collective bargaining in Arkansas that: (1) the state is currently unwilling to embrace legislation to enable bargaining for public employees, including educational personnel, and it may be more than five years away, and (2) nationally funded educational organizations and their state affiliates are willing to play power politics to gain collective bargaining rights and opportunities for educational employees. (MSE)

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THE STATUS OF HIGHER EDUCATION COLLECTIVE BARGAINING IN ARKANSAS A RIGHT TO WORK STATE

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THE STATUS OF EDUCATIONAL
COLLECTIVE BARGAINING IN ARKANSAS
A RIGHT TO WORK STATE

Collective bargaining in higher education is relatively new. Only since 1966, have community colleges begun to affiliate with labor organizations and encourage faculty participation in decision making. Yet thirty-eight states have already passed legislation permitting collective bargaining for public employees, including elementary and secondary teachers. Arkansas is one of the twelve remaining states devoid of such enabling legislation. (13:10). In 1979, Arkansas Senator Teague introduced a bill called the "Arkansas Teachers Professional Negotiation Act" to allow elementary and secondary teachers collective bargaining rights. Although the bill was defeated, its introduction is a hint of the interest in collective bargaining in public education, the natural starting point for its inclusion in higher education.

Consider patterns of implementation in other states. In the case of Norwalk Teacher's Association vs. Board of Education, 83A. 2d 484, 1951, the court upheld the school board's decision to dismiss teachers for striking. However, the court also ruled that even without legislation, public school teachers could organize and the school board could negotiate with such an organization, though such negotiation would not be required. (7:3).

In 1966 City Colleges of Chicago became the first community college system to affiliate with a labor organization and gain bargaining status. By 1973, two-hundred-one public two-year institutions or campuses were represented by 142 bargaining units. When a 1975 Carnegie survey presented respondents with the statement, "I disagree that collective bargaining has no place on campus," 76 per cent of two-year faculty and 69 per cent of all faculty supported the statement. (7:4). By 1976, 315 community colleges had bargaining representatives and/or contracts. (10:1).

In comparison with other states, Arkansas may seem far removed from the collective bargaining movement. Yet factors which contributed to the growth of collective bargaining in other states also exist in Arkansas. It is the purpose of this article to discuss the casual elements of the

movement toward collective bargaining in higher education, to examine court cases and attorney generals' opinions concerning collective bargaining in Arkansas, and to suggest implications for the future of collective bargaining in higher education in this state.

COLLECTIVE BARGAINING DEFINED

The term "collective bargaining" has developed a negative connotation because of its association with another negative word--"strike." Before applying "collective bargaining" to education, a definition is needed:

> Collective bargaining designates a definite process shaped by history and defined by law. It is a specific means by which persons identified with a particular enterprise, separated into management and labor components, are enabled, in a highly formalistic way, to discuss certain issues (or "relations") that lie between them, to reach binding agreements on how to handle these issues, and then to be governed by that agreement in the work relationship for a fixed period. (4:7).

Though criticism may arise that such a definition is too closely related to labor conflicts to fit situations which influence educational quality, realists will admit that an adversarial relationship must exist for the acceptance of collective bargaining.

COLLECTIVE BARGAINING IN EDUCATION

The above definition applies easily to education. Certainly a "specific means" is needed by administrators and faculty "to discuss certain issues," especially in a time of doubtful job security, an unstable economy, plunging enrollments, and challenged authority in society as well as on campus. These problems are issues, but they are also among the factors which have contributed to the widespread interest in collective bargaining. Thomas states that "Attitudes toward collective bargaining among professors in higher education have moved more and more toward acceptance as political and economic pressures have threatened the traditional idea of the university." (16:21). Joseph W. Garbarino cites two explanations for unionization among professionals: 1)Desire to control collectively the conditions under which they exercise their duties; and 2)The effects of large, complex and bureaucratic organizational structures in depersonalizing and rationalizing employer-employee relationships in general. (9:2) Even educators who fear the negative aspects of collective

bargaining seem to be drawing near, at least to examine it, to take "the opportunity to accept or reject the ideas, methods or results of collective bargaining." (16:21)

COLLECTIVE BARGAINING IN ARKANSAS

Do these attitudes exist among educators in Arkansas? Assessment is difficult. On the basis of a collective bargaining attitude survey given to elementary and secondary personnel, Sarthory and Kinnaird concluded that the "level of interest in collective bargaining is rather low." (13:15). They based their conclusion on the fact that only 46 per cent of the questionnaires were returned. However, can such a low return rate be attributed to apathy, or to the fear of how the researchers planned to use the data?

Before predicting or denying changes in attitudes, an examination should be made of the legal status of collective bargaining in Arkansas. References are sparse; there are only two court cases and three opinions by attorney generals, only one of which relates directly to education. However, all deal with public employees.

The first case, Potts v. Hay 313 S.W. 2d 826, took place in 1958 and concerned the right of policemen to belong to a union without the threat of losing employment. The court agreed that under Arkansas Constitutional Amendment No. 34 a person cannot be denied employment because he belongs to a union, but the state has the right to deny that person's right to strike.

In 1968 another case arose. The City of Fort Smith v. Arkansas State Council 433 S.W. 2d 153 concerned the union's belief that the city should be required to bargain collectively. The chancery court supported the union but the Arkansas Supreme Court ruled that in the absence of enabling legislation, the city could choose to bargain collectively, but could not be forced to do so.

A 1961 opinion from Attorney General Frank Holt dealt with the deduction of assessments from employee's check just as union dues are deducted. Mr. Holt "found nothing to forbid check-off agreements so long as they are voluntarily entered into by the employer and employee." (2:2-3).

Attorney General Joe Purcell's opinion in 1968 dealt with the legality of a contract between the Arkansas Department of Labor and local union. He concluded that the contract was legal, being upheld by the Potts and the Norwalk Case. (3:1).

The last opinion was from Attorney General Bill Clinton in 1977. It was in answer to questions from Senator Bryant in regard to the employees of the University of Arkansas Medical Sciences campus who formed a union and were informed by the Medical Science campus administrators that Arkansas law prohibits recognition of the union as a representative of the employees. Clinton stated that there is no Arkansas law forbidding recognition and bargaining on conditions of a non-monetary nature. Neigher is there any law prohibiting a written agreement between the union and the agency. However, Article 16, Section 4 of the Arkansas Constitution does provide that "The General Assembly shall fix the number and salaries of the employees of the different departments of the state of Arkansas." (1:2). So monetary agreements between a union and agency, if challenged in court, could probably be held to be "beyond the agency's scope of authority." (1:2).

Thus, all the official opinions of collective bargaining in Arkansas state that, while public employees have the right to join a union, the state is under no obligation to recognize or engage in bargaining with a union.

To understand the relationship of collective bargaining to Arkansas education, the author wrote to the Arkansas Department of Higher Education. A letter from Charles W. Jackson, Coordinator for Academic Programs, stated that after consulting with his staff and with Mr. Kern Treat of the Arkansas Legislative Council,

> We are not aware of either a policy of the Department of Higher Education or of a state law that prohibits collective bargaining or collective representation. However, it is our opinion that should the process of collective bargaining or collective representation lead to a strike or similar action adversely affecting the public welfare, such action would be held by the courts to be illegal and an injunction issued prohibiting its use. (6:2).

There is no law prohibiting collective bargaining in Arkansas; neither is there a law allowing it. Senator Teague's bill, introduced in the Arkansas legislature in 1979, attempts to provide a means for collective bargaining. It read, in part:

> An act to recognize the Arkansas teaching profession's role in the determination of professional salaries, hours and teaching conditions and to provide for the reasonable and

orderly resolution of disputes between the employers and the teaching profession; and for their purposes. (15:1).

The act prohibits the right to strike, so it remained in accordance with the Arkansas Supreme Court rulings. The act was defeated.

In November, 1979, the Arkansas Education Association Representative Assembly voted to support AEA efforts to place an act on the 1980 general election ballot. If the AEA can collect 45,000 signatures of registered voters by July 4, the "Arkansas Equal Education Opportunity Act" will appear on the ballot. The law would provide guidelines for quality education such as limited class sizes and special programs for talented and handicapped students. It would also establish a "minimum education standards panel" to recommend minimum educational standards to the State Board of Education. This Act is viewed by some as "a power grab" to increase the clout of organized teachers, and administrators are encouraged to oppose it. (14:1-2)

While both acts concern public education in the elementary and secondary sector, the patterns of other states have proven that once enabling legislation is passed at this level, post-secondary education soon follows suit. Two-year institutions in particular seem inclined toward unionization, perhaps because many community college faculty members come from secondary education where the adversarial role has been more acceptable than in four-year institutions. Community college teachers are also generally younger and less enamored of the educational ivory tower.

What is the future of collective bargaining in Arkansas? If one can assume the accuracy of the low return on the Sarthory and Kinnaird attitudinal scale, at least 60 percent of the respondents feel that, for Arkansas, collective bargaining is five or more years away, even in elememtary and secondary schools. Following patterns of other states, one can also assume that collective bargaining for post secondary education is even further in the future. However, at the present, evidence is lacking to determine attidudes of higher education faculty members. The author is in the process of researching organizational characteristics and attitudes toward collective bargaining in post secondary institutions in Arkansas.

At least two important conclusions can be drawn from existing information: 1) The State of Arkansas is currently unwilling to embrace legis-

lation which would enable collective bargaining for public employees, including educational personnel, and 2) Nationally funded educational organizations and their state affiliates are willing to play power politics to gain collective bargaining rights and opportunities for educational employees.

Whether Arkansas will remain the last state to maintain a vestige of resistance to collective bargaining among the twelve holdouts depends upon the willingness of educators to roll up their sleeves and become involved in the game of politics.

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